

AMENDED IN ASSEMBLY AUGUST 18, 2000

SENATE BILL

No. 2027

Introduced by Senator Sher

February 25, 2000

An act to amend Sections 6255 and 6259 of, and to add Sections 6253.3, 6257, and 6259.1 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

SB 2027, as amended, Sher. Public records: disclosure.

(1) The California Public Records Act provides that except for exempt records, every state or local agency, upon request, shall make records available to any person upon payment of fees to cover costs. The act also requires each agency to determine within 10 days from the receipt of a request for records, whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and to promptly notify the person making the request of the determination and the reasons therefor.

The act also authorizes any person to institute judicial proceedings for injunctive or declarative relief or writ of mandate to enforce his or her right to inspect or receive a copy of any public record and requires that the court award court costs and reasonable attorney fees to the plaintiff if he or she prevails in the litigation.

This bill would require that written requests for inspection or copies of public records be ~~addressed~~ *directed* to the head of each public agency or his or her ~~designee~~ *designees* or, in the case of multimembered bodies, to the executive officer,

executive secretary, administrator, or similar chief executive pursuant to specified procedures. The bill would also require that a determination by a state or local agency that a request for a public record is denied be in writing and would provide that any person who is notified of a denial of a request for public records may appeal to the Attorney General pursuant to specified procedures within 20 days of the date of denial and in cases where the agency fails to provide any response under these provisions. By creating new duties for local agency officials, the bill would impose a state-mandated local program.

The bill would also require the Attorney General to issue a written decision within 20 working days of the date that the written request and written response or lack of response of the agency is received by the Attorney General and would provide that the time limit for the Attorney General to respond is directory and not mandatory. The bill would require the Attorney General to maintain copies of the opinions issued pursuant to these provisions, to publish the opinions annually in a special volume, and make them available on the Internet. The bill would declare legislative intent that these opinions shall be given no greater deference than any other opinion of the Attorney General.

The bill would also allow the superior court, in its discretion, to impose a fine on the agency of not more than \$100 for each day that the agency's action resulted in the denial of the *plaintiff's* right to copy or inspect the record in question, not to exceed a total of \$10,000, if the court finds that in declining to comply with a request to inspect or copy a record under the act, the agency acted in bad faith or with knowledge that the request sought nonexempt records. The bill would authorize a complaining party to seek his or her judicial remedy under the act without first exhausting the administrative remedy provided under this bill. The bill would exempt the Public Utilities Commission from these provisions during the period that the commission is required to comply with statutory provisions relating to public review of commission decisions and appeal procedures.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs

mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(3) This bill would become operative on July 1, 2001.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6253.3 is added to the
2 Government Code, to read:
3 6253.3. Except for a public agency governed by a
4 multimembered body, written requests for inspection or
5 copies of public records shall be ~~addressed~~ *directed* to the
6 head of each public agency, or ~~an agency official~~ *agency*
7 *officials* designated by the agency head, who shall be
8 directly responsible to the agency head for compliance
9 with this chapter. In the case of agencies governed by
10 multimembered bodies, written requests for inspection
11 or copies of public records shall be addressed to the
12 executive officer, executive secretary, administrator, or
13 similar chief executive subject to direction of the body or
14 ~~an agency official~~ *agency officials* designated by that
15 officer who shall be directly responsible to the body for
16 compliance with this chapter. The name and address of
17 the ~~official~~ *officials* designated under this section shall be
18 made available to persons inquiring about procedures for
19 requests under this chapter. In the event a written
20 ~~request is addressed to a party other than the official~~
21 *request is directed to a party other than the officials*
22 designated under this chapter, it shall be forwarded to
23 ~~that the appropriate~~ official immediately. Agencies may
24 develop internal operating procedures to ensure that all

1 staff are aware of the ~~official~~ *officials* designated under
2 this section and that requests under this chapter are acted
3 upon promptly. These procedures shall be in addition to,
4 and not in lieu of, guidelines adopted under Section 6253.4
5 and requirements adopted pursuant to subdivision (e) of
6 Section 6253.

7 SEC. 2. Section 6255 of the Government Code is
8 amended to read:

9 6255. (a) The agency shall justify withholding any
10 record by demonstrating that the record in question is
11 exempt under express provisions of this chapter or that on
12 the facts of the particular case the public interest served
13 by not making the record public clearly outweighs the
14 public interest served by disclosure of the record.

15 (b) A response to a written request for inspection or
16 copies of public records that includes a determination
17 that the request is denied, in whole or in part, shall be in
18 writing.

19 SEC. 3. Section 6257 is added to the Government
20 Code, to read:

21 6257. (a) A person may request the Attorney
22 General to review a state or local agency's denial of a
23 written request to inspect or receive a copy of a public
24 record by delivering a copy of the request and the written
25 response by the agency denying, in whole or in part, the
26 request to the office of the Attorney General within 20
27 days of receipt of the agency's written denial. In the case
28 of the failure of an agency to provide any response under
29 Section 6253 to a public records request within the time
30 limits specified by this chapter, the person may seek
31 review by the Attorney General by providing a copy of
32 the request and the circumstances under which it was
33 sent to the agency no less than 20 days and no more than
34 40 days after the request was delivered or mailed to the
35 agency. The Attorney General may grant relief from the
36 40-day time limit upon a showing by the person seeking
37 relief that he or she refrained from requesting review
38 within the 40-day time limit because the person
39 reasonably relied upon representations of the agency that
40 a response would be forthcoming.



1 The person seeking review shall demonstrate by means
2 of written proof of service or other credible and reliable
3 means that a copy of his or her request for review has
4 been delivered to the denying agency. Within 20 working
5 days of receipt of the request for review that complies
6 with the requirements of this subdivision, the Attorney
7 General shall issue a written opinion stating whether the
8 agency's response or lack of response complied with
9 provisions of this chapter.

10 (b) For good cause, the Attorney General may extend
11 by 30 working days the time to issue an opinion under this
12 section by sending written notice to the complaining
13 party and a copy to the denying agency stating the
14 reasons for the extension and the day on which a decision
15 is expected to be issued. As used in this section, "good
16 cause" means any of the following:

17 (1) The need to obtain additional information from
18 the agency or the requester.

19 (2) The need to conduct research on issues of first
20 impression.

21 (3) An unmanageable workload.

22 (4) Unanticipated absence of staff assigned to a
23 particular request, or similar unavoidable circumstance.

24 (c) The Attorney General may solicit additional
25 information or explanation from the denying agency,
26 including copies of the records claimed to be exempt, or
27 a detailed explanation of the content of the information
28 in those records. The denying agency may, within 10
29 working days from the date of receipt of the request
30 pursuant to subdivision (a), submit any additional
31 information or explanation it deems relevant. However,
32 the records or other information for which an exemption
33 is claimed shall not be provided except in response to a
34 request by the Attorney General and shall not be
35 disclosed by the Attorney General. The Attorney General
36 shall return or destroy nondisclosable records received
37 under this subdivision upon completion of the review and
38 shall not use the records for any other purpose. The
39 agency need not provide records or information but
40 failure to do so without adequate justification under the

1 circumstances of the case may be considered in assessing
2 the sufficiency of the agency's written denial under
3 review.

4 (d) If the Attorney General or the Department of
5 Justice is the agency that is the subject of the public
6 records request, the request for review under this section
7 shall be treated as a request for reconsideration and,
8 where possible, shall be reviewed by members of the
9 Attorney General's office not involved in the original
10 decision.

11 (e) Upon completion of the opinion pursuant to this
12 section, the Attorney General shall immediately mail a
13 copy of it to the person requesting review and to the state
14 or local agency that denied access to the record in
15 question.

16 (f) The Attorney General shall maintain copies of
17 opinions issued pursuant to this section at each of his or
18 her legal offices for purposes of public inspection. The
19 Attorney General shall cause to be published annually a
20 special volume of opinions issued under this section and
21 shall make the opinions available on the Internet. The
22 Attorney General may charge a fee for the sale of the
23 volumes not to exceed the reasonable cost of publication
24 and distribution.

25 (g) Notwithstanding any other provision of law,
26 except where the records of the Attorney General or the
27 Department of Justice are at issue, neither the Attorney
28 General, nor the Department of Justice, nor any of its staff
29 shall be subject to suit or to discovery in any suit for any
30 action taken as a result of review under this section the.

31 (h) An opinion issued under this section does not
32 affect the right of a person to enforce his or her right to
33 inspect or to receive a copy of any public record through
34 an action pursuant to Sections 6258 and 6259. A person
35 shall not be required to exhaust the administrative
36 remedies available in this section prior to filing a legal
37 action. If a person elects to bring an action under Sections
38 6258 and 6259, the Attorney General shall not proceed
39 under this section. If a person elects to seek review under
40 this section, no legal action may be brought against the

1 agency whose decision is the subject of the opinion until
2 10 days after the issuance and mailing of the opinion. A
3 person may withdraw, by written notice, his or her
4 request for review under this section if the withdrawal
5 notice is received by the Attorney General prior to the
6 issuance of an opinion.

7 (i) (1) Representation of a state agency by the
8 Attorney General involving advice that a request for
9 inspection or copies of public records be denied, in whole
10 or in part, may provide a basis for that agency to claim an
11 attorney-client relationship that would preclude the
12 Attorney General from providing an opinion under this
13 section *regarding that request*.

14 (2) A state agency against which an action is brought
15 pursuant to Sections 6258 and 6259, after a receipt of an
16 adverse opinion under this section, is authorized to retain
17 counsel other than the Attorney General for the defense
18 of that action.

19 (3) Except as provided in this section, the Attorney
20 General's review under this section does not preclude the
21 Attorney General's representation of the affected state
22 agency on other matters.

23 (j) The time limits for the Attorney General to
24 respond pursuant to subdivisions (a) and (b) are
25 directory not mandatory.

26 (k) This section shall not apply to a request for public
27 records made to a state agency by a party to a pending
28 proceeding involving the state agency or an employee of
29 the state agency, or a pending investigation by the state
30 agency, if the Attorney General has provided or is
31 providing legal advice or representation to the state
32 agency with regard to the proceeding or investigation.

33 SEC. 4. Section 6259 of the Government Code is
34 amended to read:

35 6259. (a) Whenever it is made to appear by verified
36 petition to the superior court of the county where the
37 records or some part thereof are situated that certain
38 public records are being improperly withheld from a
39 member of the public, the court shall order the officer or
40 person charged with withholding the records to disclose

1 the public record or show cause why he or she should not
2 do so. The court shall decide the case after examining the
3 record in camera, if permitted by subdivision (b) of
4 Section 915 of the Evidence Code, papers filed by the
5 parties and any oral argument and additional evidence as
6 the court may allow.

7 (b) If the court finds that the public official's decision
8 to refuse disclosure is not justified under Section 6254 or
9 6255, it shall order the public official to make the record
10 public. If the judge determines that the public official was
11 justified in refusing to make the record public, he or she
12 shall return the item to the public official without
13 disclosing its content with an order supporting the
14 decision refusing disclosure.

15 (c) In an action filed on or after January 1, 1991, an
16 order of the court, either directing disclosure by a public
17 official or supporting the decision of the public official
18 refusing disclosure, is not a final judgment or order within
19 the meaning of Section 904.1 of the Code of Civil
20 Procedure from which an appeal may be taken, but shall
21 be immediately reviewable by petition to the appellate
22 court for the issuance of an extraordinary writ. Upon
23 entry of any order pursuant to this section, a party shall,
24 in order to obtain review of the order, file a petition
25 within 20 days after service upon him or her of a written
26 notice of entry of the order, or within such further time
27 not exceeding an additional 20 days as the trial court may
28 for good cause allow. If the notice is served by mail, the
29 period within which to file the petition shall be increased
30 by five days. A stay of an order or judgment shall not be
31 granted unless the petitioning party demonstrates it will
32 otherwise sustain irreparable damage and probable
33 success on the merits. Any person who fails to obey the
34 order of the court shall be cited to show cause why he or
35 she is not in contempt of court.

36 (d) The court shall award court costs and reasonable
37 attorney fees to the plaintiff should the plaintiff prevail in
38 litigation filed pursuant to this section. The costs and fees
39 shall be paid by the public agency of which the public
40 official is a member or employee and shall not become a

1 personal liability of the public official. If the court finds
2 that the plaintiff's case is clearly frivolous, it shall award
3 court costs and reasonable attorney fees to the public
4 agency.

5 (e) If an agency declines to comply with a request to
6 inspect or copy a record requested pursuant to this
7 chapter and the court determines that the agency acted
8 in bad faith or with knowledge that the request sought
9 nonexempt records, the court, in its discretion, may make
10 an award not to exceed one hundred dollars (\$100) per
11 day, for each day, as determined by the court, that the
12 agency's action resulted in the denial of *the* plaintiff's
13 right to copy or inspect the record or records in question.
14 In determining the amount of an award under this
15 subdivision, the court shall consider all facts and
16 circumstances surrounding the agency's decision,
17 including, but not limited to, the following factors:

18 (1) Whether the agency unreasonably failed to
19 respond within the time periods set forth in Section 6253
20 or otherwise engaged in conduct that caused undue
21 delay.

22 (2) Whether the agency's justification for denying the
23 request was reasonably based upon its perceived
24 obligation to protect the rights of persons or entities
25 identified in the requested records.

26 (3) Whether the agency has developed publicly
27 accessible internal operating procedures under Section
28 6253.3 or guidelines under Section 6253.4.

29 (4) Whether the agency's denial was based on a
30 reasonable interpretation of the law.

31 (5) Whether the plaintiff acted in good faith in
32 pursuing the request.

33 An award pursuant to this section shall not exceed a
34 total of ten thousand dollars (\$10,000) for the record or
35 records in question, and an award shall not include the
36 period of time that a request for an opinion is pending
37 with the Attorney General pursuant to Section 6257 or the
38 period of time that a court is considering the plaintiff's
39 petition.

1 SEC. 5. Section 6259.1 is added to the Government
2 Code, to read:

3 6259.1. Notwithstanding Sections 6253.3 and 6257, and
4 subdivision (e) of Section 6259, the Public Utilities
5 Commission shall not be in violation of these sections for
6 nondisclosure of documents for any time period during
7 which the commission is required to comply with
8 statutory provisions relating to public review of
9 commission decisions and appeal procedures.

10 SEC. 6. It is the intent of the Legislature that an
11 opinion of the Attorney General issued pursuant to
12 Section 6257 of the Government Code shall be given no
13 greater deference than any other opinion of the Attorney
14 General.

15 SEC. 7. This act shall become operative on July 1,
16 2001.

17 SEC. 8. Notwithstanding Section 17610 of the
18 Government Code, if the Commission on State Mandates
19 determines that this act contains costs mandated by the
20 state, reimbursement to local agencies and school
21 districts for those costs shall be made pursuant to Part 7
22 (commencing with Section 17500) of Division 4 of Title
23 2 of the Government Code. If the statewide cost of the
24 claim for reimbursement does not exceed one million
25 dollars (\$1,000,000), reimbursement shall be made from
26 the State Mandates Claims Fund.

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